Supreme Court, U.S.
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(2)

No. 00-559

In The

Supreme Court of the United States

LUC J. R. MARTINI,

Petitioner,

v.

VIRGINIA M. GEIER,

Respondent.

On Petition For Writ Of Certiorari To The King County Superior Court Of The State Of Washington

SUPPLEMENTAL BRIEF

GREGORY M. MILLER
Counsel of Record
220 College Club Bldg.
505 Madison Street
Seattle, WA 98104
(206) 343-4540

Attorney for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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INTRODUCTION

Petitioner, Luc J. R. Martini, submits this supplemental brief pursuant to Rule 15.7 to provide information relevant to his Petition for Certiorari which was brought to his attention after the Petition was filed.

THE DUE PROCESS VIOLATIONS RAISED BY MARTINI ARE TYPICAL OF HOW WASHINGTON COURTS OF LIMITED JURISDICTION CONDUCT ANTI-HARASSMENT HEARINGS

Mr. Martini's counsel was contacted after filing the Petition by the Washington ACLU regarding an anti-harassment hearing and order in Washington State's Jefferson County District Court in August, 2000, because the Jefferson County judge's conduct of the proceeding and resulting denial of due process was virtually identical to that of the two King County District Court judges in Mr. Martini's case.[1] These materials and the case were not known to Mr. Martini or counsel prior to filing the Petition. They demonstrate that the problems identified by Mr. Martini are not isolated to his case but persist today in one of the most common proceedings in Washington's courts of limited jurisdiction.[2] Although the

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[1] *Robbins v. Biedel*, No. 8081 (Jeff. Ct'y. D. Ct., Aug. 11, 2000). The petition, hearing transcript, order, and transmittal letter from trial counsel are attached as Appendix A., pp. 1-13.

[2] Counsel is informed by Mr. Biedel's trial counsel that the case is being appealed to the superior court pursuant to Washington court rules, with argument tentatively scheduled for January, 2001. If that appeal is successful it would not make Mr. Martini's Petition moot since it would be at best an unpublished decision of a Washington trial court with no

other state appellate courts which have addressed similar statutes have required their inferior courts to conform such proceedings to Constitutional due process requirements, *see* Petition, pp. 24-27, the majority of states have not addressed the issue. There is no reason to believe similar proceedings in other states which, like Washington, are without appellate rulings, are any more consistent with Constitutional requirements than are the Washington lower courts. Judicial economy – and protection of constitutional rights for multitudes of people daily – is served by addressing this issue now for Washington and for all other states which do not have appellate decisions on the subject.

An anti-harassment cause of action was brought against Mr. James Biedel by Ms. Sally Robbins in Jefferson County District Court in Port Townsend, Washington with a hearing on August 11, 2000, before Judge Lawrence Wilson. Ms. Robbins alleged conclusions only: that Mr. Biedel "verbally abused" her when she chaired a public meeting of the Port Townsend Police Advisory Committee on a noise ordinance, and then later "verbally harassed" her in a second incident in a local store. App.

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binding authority on any other court. It would not provide any basis for Mr. Martini to return to King County District Court to seek vacation of the September, 1998 protection order and the finding of unlawful harassment which is the specific and material relief he seeks given the threat of civil litigation against him for claimed unlawful harassment. *See* Petition, pp. 11-12; *Burchell v. Thibault, infra.* Just as important for Mr. Martini is that winning that appeal would not provide the authoritative guidance to all Washington courts (or other state courts) on the minimum Constitutional requirements of due process for such anti-harassment protection order hearings.

A-3. No specific facts were stated. *Id.* Mr. Biedel was not permitted to present any evidence contrary to the petition or on his own behalf. App. A-5 to A-8.

As in Mr. Martini's case, a one-year protection order was entered against Mr. Biedel based on the finding that he had committed "unlawful harassment" (App. A-9), the finding required by the statute, RCW 10.14.080(3). Entry of this order provides the basis for a permanent order to be entered within a year on request of Ms. Robbins because the statute switches the burden of proof to require Mr. Biedel prove at a later hearing that the order should not enter: "The court **shall** grant the petition for renewal **unless** the respondent proves by a preponderance of the evidence that the respondent will not resume harassment to the petitioner when the order expires." RCW 10.14.080(5). (Emphasis added).

The *Robbins v. Biedel* transcript demonstrates that the complaint Mr. Martini makes about how two different judges in the King County District Court in Renton, Washington conducted his anti-harassment proceedings by categorically denying him due process in September 1998 is virtually identical to how anti-harassment hearings are typically conducted by the courts in Jefferson County now: as perfunctory, judge-controlled and directed proceedings where protection orders are handed out on request. *See* App. A-4 to A-8; A-13.[3]

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[3] Mr. Biedel's trial counsel describes current practice in Jefferson County:

> Here in Jefferson County, [under] this statutory scheme, . . . Routinely, any person who does not wish to be contacted, or even talked to, by another person,

The *Robbins v. Biedel* transcript shows Judge Wilson did not pretend to have or permit a true fact finding or contested hearing with the right to call witnesses, present evidence, and argue on one's own behalf, as was also the case in Mr. Martini's hearing. Judge Wilson stated "This is not a fact-finding hearing. That's not the purpose here," App. A-5, even though he then entered an order making a finding of unlawful harassment. Rather, he stated "the issue for the court is whether the order should enter, and whether it should enter for a period of up to one year . . . " *Id.*

When Mr. Biedel argued that the order was improper in part because Ms. Robbins is a member of city government as chair of the Port Townsend Police Advisory Committee, so that he is allowed to address her in her role as a public official while exercising his free speech rights, Judge Wilson stated, "Well that's an issue that you'll have to raise elsewhere." App. A-6. He then signed the order forbidding any contact. App. A-10.

Finally, in response to Mr. Biedel's defense that "the petition is malicious, the statements are false and I have evidence to show that it is true, that the complaint is not accurate," Judge Wilson stated:

> Well that is an issue for trial Mr. Biedel. That's something you'll have to arrange. I would suggest you discuss that issue with your attorney. That would be a separate civil proceeding. It's

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can rush into court and obtain an Order essentially banishing someone from coming near them.

> the purpose of the court here to simply see that you two are kept separate and apart and that you have no reason to communicate with each other or be in contact with each other. The clerk will see that you get a copy of the order, and discuss those other issues with your attorney.[4]

The heart of the respondent's resistance to the anti-harassment order in *Robbins v. Biedel* was the same as Mr. Martini's: there was no, or insufficient evidence to support finding Mr. Biedel committed unlawful harassment which would satisfy the statutory requirement of a course of illegal conduct (RCW 10.14.020) and he had evidence he wished to present to contradict the assertions in the petition which was the basis for the finding. But Judge Wilson refused to hear any evidence. He simply accepted the petition without scrutiny. He only asked the respondent, Mr. Biedel, if there was any reason he needed to contact Ms. Robbins, then ignored the reason Mr. Biedel gave when making the order.

The circumstances in *Robbins v. Biedel* are particularly mischievous because Robbins was acting as a public official at the time the first of the two alleged acts of harassment occurred. Some of Mr. Biedel's statements which were a necessary part of a "course of conduct" of the alleged harassment, since there were only two events alleged,[5] occurred at a public hearing at which Ms.

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[4] App. A-7 to A-8

[5] The statute requires a course of conduct which is "a pattern of conduct composed of a series of incidents over a period of time" that necessarily is more than a single incident. RCW 10.14.020(2). *See Burchell v. Thibault*, 74 Wn. App. 517, 521-22, 874 P.2d 196, 199 (1994). Interestingly, at the time of

Robbins was presiding – a setting in which Mr. Biedel has protected First Amendment speech rights which may not lightly be infringed, as the statute itself explicitly recognizes: "Constitutionally protected activity is not included within the meaning of 'course of conduct.' " RCW 10.14.020(2). All this was ignored by the trial court in its denial of Mr. Biedel's due process right to present evidence and argument in his behalf, similar to how the King County judges ignored Mr. Martini's efforts to present evidence on his behalf and contrary to the petitioner.

Martini's position that Constitutional due process is required for respondents in anti-harassment hearings under Washington's statutory scheme is a position which does not have "institutional" support in the same sense that criminal defendants have an organized criminal defense bar or public defender organizations which have institutional reasons and resources to pursue an important issue to the higher appellate courts for proper

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Burchell v. Thibault when superior courts conducted these proceedings prior to the expansion of the jurisdiction of the courts of limited jurisdiction to hear these matters, *see* Petition, p. 4, n. 4, there did not seem to be the same problem in obtaining due process and a true hearing as exists today when these matters are heard in huge numbers in the courts of limited jurisdiction.

An underlying issue thus may be whether Constitutional principles of due process apply **and will be enforced** in courts of limited jurisdiction when parties appear *pro se*, as is the norm in these courts where the vast majority of our citizens' contact with the courts occurs. Will due process be required even in cases like these where the respondent is in a currently politically unpopular position, i.e., an alleged harasser, so there can be an accurate determination of whether the allegation is true?

adjudication, despite the high costs and typical lack of resources of the particular party. Rather, these cases are technically between private parties and the losing party proceeds through the appellate process to the superior courts and then to the appellate courts only on their own funding, which in most cases is very limited and will not support appeals to the higher appellate courts. This helps explain the scarcity of reported appellate court decisions in Washington and elsewhere and why this Court should take this opportunity to address the issue for Washington and those many other states which have not addressed it.

CONCLUSION

Mr. Martini respectfully submits this additional information from Jefferson County, Washington, which demonstrates the concerns raised by him are all too typical of the conduct of anti-harassment hearings by courts of limited jurisdiction in Washington State, particularly where the parties are *pro se*, and that respondents in such proceedings are regularly denied their Federal Constitutional due process rights. The materials demonstrate the present need for this Court to establish clear rules consistent with the Constitution for such hearings, whether held in Washington State or elsewhere. There is a problem. It should be fixed.

DATED this 30th day of November, 2000.

GREGORY M. MILLER
Counsel of Record
Attorney for Petitioner

COURT OF WASHINGTON

FOR Jefferson County District Court

Sally A. Robbins	)	No: 8081
Petitioner	)	**PETITION FOR AN ORDER FOR PROTECTION (UNLAWFUL HARASSMENT) (PTORAH)**
vs.	)	
Jim Biedel	)	
Respondent	)	**(Filed July 28, 2000)**

1. I am petitioning for an Order for Protection against Unlawful Harassment.

* * *

4. Identification of the Petitioner:
   Name: Sally A. Robbins
   Date of Birth: 9-17-30
   Driver's License or Identicard (# and State): Robb/SA 7050P WA
5. Identification of Respondent:
   Name: Jim Biedel
   Date of Birth: 12-22-53
   Driver's License or Identicard (# and State) or, if unavailable, home address: BIEDEJW47OEZ

* * *

REQUEST FOR TEMPORARY ORDER: AN EMERGENCY EXISTS as described in the statement below. I need a temporary restraining order issued immediately without notice to the respondent until a hearing to avoid great or irreparable harm. I reqeust a Temporary Order for Protection that will:

I REQUEST AN ORDER FOR PROTECTION following a hearing **THAT WILL:**

RESTRAIN respondent from making any attempts to keep under surveillance, [✓] me [ ] the minors named in paragraph 6 above.

RESTRAIN respondent from making any attempts to contact, except for mailing of court documents, [✓] me [ ] the minors named in paragraph 6 above.

EXCLUDE respondent from any place I may reside. This address at present is [ ] confidential [✓] the following: 238 Rose Street Port Townsend

RESTRAIN respondent from entering or being within 100 ft (distance) of my [✓] residence [ ] workplace [ ] other:

OTHER:

REMAIN EFFECTIVE longer than one year because respondent is likely to resume acts of unlawful harassment against me if the order expires in a year.

Unlawful harassment means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses, or is detrimental to such person and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress and shall actually cause substantial emotional distress to the petitioner or when the course of conduct is contact by a person 18 years of age or over that would cause a reasonable parent to fear for the well-being of their child. Course of conduct means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course

of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication. Constitutionally protected activities are not included within the meaning of "course of conduct."

STATEMENT: The respondent has committed acts of unlawful harassment as follows. (Describe *specific acts* of harassment and their *approximate dates*, beginning with the *most recent act*. You may want to include police responses.)

I was chair of the Port Townsend Police Advisory & Facilitated a public forum on 3-21-00 about a noise ordinance. Jim Biedel verbally abused me during the 2 hour meeting. I am afraid of him. On July 27, at Penny Saver, he verbally harassed me in front of 2 store clerks.

(continue on separate page if necessary)

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED /s/ Sally A. Robbins at Jefferson Co., Washington.
7/28/00

/s/ Sally A. Robbins

[ ] My residential address is confidential. Direct legal service by mail to: _____

Hearing transcript of Robbins vs. Biedel
August 11th, 2000 Judge Lawrence Wilson Pro-Tem

Judge Wilson: I call the matter of Robbins Vs. Biedel. Will those parties please step forward to the front counter where the microphones are. (pause) Am I pronouncing that correctly?

Ms. Robbins: My name is Robbins

Judge Wilson: "Robbins" R-O-B-B-I-N-S (spells Robbins)

Ms. Robbins: Correct

Judge Wilson: OK, And you are James Biedel

Mr. Biedel: I am your honor

Judge Wilson: For the record Ms. Robbins will you please state your name and address, you've got your name posted here on the petition. Mr. Biedel your correct mailing address

Mr. Biedel: Is it on the petition your honor?

Judge Wilson: I don't see it here (unintelligible)

Mr. Biedel: Would you like me to give it?

Judge Wilson: I would like it if you could please.

Mr. Biedel: My address is 3131 San Juan Avenue, Port Townsend, Washington

Judge Wilson: Thank You. . . . The record reflects Ms. Robbins, that you filed a petition asking the court for an order of protection from unlawful civil harassment from Mr. Biedel.

Mr. Biedel in this petition Ms. Robbins is asking that you be restrained from making any attempts to keep her under surveillance or any minors named in paragraph two, you are restrained from making any attempts to contact her or any minors as in paragraph two and further she is asking that you be resrained from entering or being within 100 feet of petitioners residence. That residence indicated on the record being 238 Rose Street in the City of Port Townsend.

Is there any reason, Ah. . . . I would advise you at this point "This is not a fact finding hearing" the issue for the court is whether the order should enter, and whether it should enter for a period for up to one year on those conditions.

Is there any reason that you should keep the petitioner Ms. Robbins under surveillance?

Mr. Biedel: There is no reason, however I believe the petition is unfounded.

Judge Wilson: This is not a fact finding hearing. That's not the purpose here. OK

Is there any reason that you should have contact with the petitioner of any of the minors? Are there any minors involved with this?

Mr. Biedel: No

Judge Wilson: Is there any reason you should maintain contact with her?

Mr. Biedel: Your honor, I do not feel that I should have to maintain a vigil making sure that I am not in her vicinity.

Judge Wilson: That really isn't responding to acts (unintelligible) it's deliberately contacting her. If you should meet her in a supermarket or a bus, that sort of thing is to be avoided at all possible. In other words it would be any overt act or attempt on your part to contact her in any way.

Is there any reason you need to do that?

Mr. Biedel: There may be, your honor

Judge Wilson: Could you site?

Mr. Biedel: If she was to be a part of city government as she was during the public meeting where this complaint started. I would want to be able to exercise my free speech rights to address her as a public official.

Judge Wilson: I think you could probably do that in some fashion other than putting the petitioner under fear. This would mean you would have to refrain from deliberately causing the petitioner any fear of harm or any kind of harassment.

Mr. Biedel: I understand your honor, however the complaint is just that. The complaint is based upon my free speech rights.

Judge Wilson: Well that's an issue that you'll have to raise elsewhere. Is there any reason that you should go within 100 feet of her residence at 238 Rose Street.

Mr. Biedel: Yes there is your honor.

Judge Wilson: Alright

Mr. Biedel: I have friends and acquaintance's [sic] which may live on that street.

Judge Wilson: May live on that street?

Mr. Biedel: Well, a friend that is a gardener lives near that location.

Judge Wilson: Well, you'll have to meet your friend elsewhere Mr. Biedel, the court is going to enter the order, and that order would restrain you from making any attempts to keep her under surveillance and this would mean any deliberate attempt on your part by overt act to put her in fear. The second part of this also, you're not to contact her in any way and this would be directly, indirectly, or through a third party until such time as an issue is raised later the court can modify the order if it finds that an issue is raised reasonably as you have indicated. The third part of this order that you're restrained from going within 100 feet of her residence at 238 Rose Street is also will be in effect [sic], this will be effect [sic] for a period of up to one year, that would be until the 11th day of August, 2001. The order enters at this time subject to those conditions. Do you understand now that contact would be any contact with her designed to harass or otherwise enter fear [sic] with her and, in any form or fashion? You understand that?

Mr. Biedel: Your honor, I do have a question, your honor

Judge Wilson: Certainly

Mr. Biedel: I believe that the petition is malicious, and the statements are false and I have evidence to show that is true, that the complaint is not accurate.

Judge Wilson: Well that is an issue for a trial, Mr. Biedel. That's something you'll have to arrange. I would suggest you discuss that issue with your attorney. That would be a separate civil proceeding. It's the purpose of the court here to simply see that you two are kept separate and apart and that you have no reason to communicate with each other or be in contact with each other. The clerk will see that you get a copy of the order, and discuss those other issues with your attorney, If you have a problem with it.

Mr. Biedel: Thank you, your honor

Ms. Robbins: thank you

I swear under penalty of perjury under the Constitution of the State of Washington that this is a true and accurate transcription of the hearing that took place in Jefferson County District Court August 11th, 2000 before the Honorable Lawrence Wilson Judge Pro Tem.

/s/ James W. Biedel — 08-18-2000
James W. Biedel — date
3131 San Juan Avenue
Port Townsend, Washington

SUPERIOR [ ] DISTRICT [X] COURT OF WASHINGTON FOR COUNTY OF JEFFERSON

Sally A. Robbins Petitioner vs. James Biedel Respondent	)	No. 8081 **ORDER FOR PROTECTION FROM UNLAWFUL CIVIL HARASSMENT** (ORAH) (Clerk's action required)

WARNING TO THE RESPONDENT: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 10.14 RCW and RCW 10.31.100 *and will subject a violator to arrest.* Willful disobedience of the terms of this order may also be contempt of court and subject you to penalties under chapter 7.21 RCW.

1. Notice of this hearing was served on the respondent by [ ] personal service [ ] service by publication pursuant to court order [X] other Jefferson Co. Sheriff

* * *

Based upon the petition, testimony, and case record, the court finds that the respondent committed unlawful harassment, as defined in RCW 10.14.080, and was not acting pursuant to any statutory authority, and **IT IS THEREFORE ORDERED THAT:**

[✓] Respondent is RESTRAINED from making any attempts to keep under surveillance petitioner and any minors named in paragraph 2 above.

[✓] Respondent is RESTRAINED from making any attempts to contact petitioner and any minors named in paragraph 2 above.

[✓] Respondent is RESTRAINED from entering or being within 100 ft. (distance) of petitioner's [✓] residence [ ] place of employment [ ] other:

At present petitioner's address is [ ] confidential [✓] the following:

238 Rose St., Port Townsend

IT IS FURTHER ORDERED that the Clerk of Court shall forward a copy of this order on or before the next judicial day to:

[X] Jefferson County Sheriff's Office,

[ ] _____ Police Department, **WHERE PETITIONER LIVES** which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

* * *

THIS ANTIHARASSMENT ORDER EXPIRES ON 8/11/01. If the duration of this order exceeds one year, the court finds that respondent is likely to resume unlawful harassment of the petitioner when the order expires.

DATED 8/11/00 at 2:35 PM

/s/ Lawrence Wilson
JUDGE/COURT COMMISSIONER

I acknowledge receipt of a copy of this Order:

/s/ Sally A. Robbins — 8/11/00
Petitioner — Date

I acknowledge receipt of a copy of this Order:

/s/ Jim Biedel — 8/11/00
Respondent — Date

James M. Bendell
Attorney at Law
P.O. Box 587
2535 Ivy Street
Port Townsend, WA 98368
(360) 379-5221 Facsimile (360) 379-3238
bendell@cablespeed.com

November 27, 2000

By facsimile only 206-340-4646

Greg Miller, Esq.
505 Madison Street, Suite 220
Seattle, WA 98104

RE: Antiharassment Orders

Dear Greg;

As you know I was referred to your office by the American Civil Liberties Union because I am also embroiled in an appeal of a Washington 'antiharassment order'. I laud your efforts to seek review before the Supreme Court.

Here in Jefferson County, this statutory scheme, which no doubt had a praiseworthy origin to stop domestic violence against women, has mutated into a type of 'catch-all' gripe session raised to the dignity of a court proceeding. Routinely, any person who does not wish to be contacted, or even talked to, by another person, can rush into court and obtain an Order essentially banishing someone from coming near them.

I can only compare the due process protections in this devolved procedure to the old *Bonanza* television

show wherein the Sheriff, seeing some suspicious characters ride into town, would go to the saloon and demand that they be gone by sunrise.

Sincerely,

/s/ Jim Bendell

Jim Bendell